IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEPHEN L. MILIONIS,	)	**No. 27808-5-III**
Appellant,	)	
	)	**Division Three**
v.	)	
	)	
NEWPORT SCHOOL DISTRICT, NO. 56-415 and SHIRL NADEAU,	)	**UNPUBLISHED OPINION**
	)	
Respondents.	)	
	)	

Brown, J. ─ Stephen Milionis, a teacher and coach, appeals the summary dismissal of his suit alleging tortious interference with a business expectancy, outrageous conduct, and breach of contract against the Newport School District No. 56-415 and its Superintendant, Dr. Shirl Nadeau (collectively the District). This dispute centers on Mr. Milionis' 1999 Idaho suspension from teaching for an inappropriate relationship with a student, his 2003 administrative suspension by the District, and the parties 2004 settlement agreement. After the settlement, Dr. Nadeau reported her suspicions to the Office of Superintendent of Public Instruction (OSPI). In 2005, OSPI dismissed its investigation with no additional action against Mr. Milionis. Mr. Milionis

contends the trial court erred in deciding he lacked a prima facie case of tortious interference and outrageous conduct and in applying RCW 4.24.510, the anti-SLAPP (Strategic Lawsuit Against Public Participation) immunity provisions. We disagree, and affirm.

FACTS

In 1985, Mr. Milionis began working as a counselor, special education instructor, and coach in Wallace, Idaho. While employed for the Wallace School District, he developed a relationship with a female student. After graduation, the student and Mr. Milionis lived together in Coeur d'Alene, Idaho, where the student enrolled in college and Mr. Milionis began teaching for the Coeur d'Alene School District. After the relationship ended, the student filed a civil action against Mr. Milionis, "alleging seduction and sexual misconduct." Clerk's Papers (CP) at 61. The parties settled, but the student's attorney reported Mr. Milionis to the Idaho Professional Standards Commission (IPSC).

IPSC and Mr. Milionis agreed to a one-year suspension. His license was restored in 1999. Mr. Milionis then began working for the Oroville School District in Washington. When applying, he disclosed his prior suspension. IPSC also reported his suspension to OSPI. Following an investigation, the parties entered an agreed order of stayed suspension for a minimum of 36 months. Mr. Milionis acknowledges his conduct was inappropriate and "in violation of . . . [WAC] 180-87-080." CP at 46. This

section states, "Unprofessional conduct includes the commission by an education practitioner of any sexually exploitive act with or to a student." WAC 180-87-080, *recodified at* WAC 181-87-080.

OSPI agreed to allow Mr. Milionis to continue to teach, counsel, and coach in Washington; in exchange he would refrain from inappropriate behavior and continue to receive counseling. In 2002, the stayed suspension was lifted and Mr. Milionis' file was closed. During the stayed suspension, Mr. Milionis transferred to another Washington school district. During the interview process, he informed the Newport School District's hiring committee that he was on probation with OSPI, but indicated on his application he had never been found to have sexually exploited a minor.

A reporter contacted Newport School District's superintendent, Dr. Nadeau, in 2003 regarding an article on coaches who had relationships with their students. The reporter inquired about Mr. Milionis. Dr. Nadeau checked Mr. Milionis' employment application and discovered he checked, "no" when asked whether he had ever been found by any disciplinary board to have sexually exploited a minor. CP at 40. Dr. Nadeau started an investigation, but in July 2004, before its conclusion, Mr. Milionis agreed to terminate his employment.

The District agreed to keep Mr. Milionis on paid administrative leave status for another year, with benefits, and to provide a letter of recommendation for future employment. The agreement provides, however, that nothing "precludes the District

and the District's Superintendent from meeting complaint and disclosure requirements under Chapters 180-87 and 180-86 WAC or under any other applicable law." CP at 53. Mr. Milionis, in turn, agreed to release and discharge the school district and Dr. Nadeau "from any and all claims and liabilities." CP at 53.

In August 2004, Dr. Nadeau sent a letter to OSPI, notifying it of suspected unprofessional conduct. In December 2005, OSPI decided to take no additional action and dismissed the investigation.

Mr. Milionis was unable to find a position with a Washington school district. He filed suit against Newport School District and Dr. Nadeau for tortious interference with a business expectancy, outrageous conduct, and breach of contract. The trial court summarily dismissed the interference with a business expectancy and outrageous conduct claims, but denied the District's request for summary judgment of the breach of contract claim. This court then decided *Bailey v. State,* 147 Wn. App. 251, 191 P.3d 1285 (2008), *review denied*, 166 Wn.2d 1004 (2009) regarding immunity afforded under RCW 4.24.510, the anti-SLAPP statute, for complaints to government agencies. The District successfully requested reconsideration and the court summarily dismissed the breach of contract claim as well. Mr. Milionis appeals.

ANALYSIS

The issue is whether the trial court erred in summarily dismissing Mr. Milionis' tortious interference with a business expectancy, outrageous conduct, and breach of

contract claims.

When reviewing a summary judgment order, we engage in the same inquiry as the trial court. *Tyrrell v. Farmers Ins. Co.,* 140 Wn.2d 129, 132-33, 994 P.2d 833 (2000). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact, entitling the moving party to judgment as a matter of law. CR 56(c). This court considers all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party. *Seven Gables Corp. v. MGM/UA Entm't Co.,* 106 Wn.2d 1, 3, 721 P.2d 1 (1986).

A. Tortious Interference. Mr. Milionis contends the District interfered with his opportunity to obtain employment in a Washington school district. To establish tortious interference with a business expectancy, a plaintiff must show, "(1) the existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage." *Leingang v. Pierce County Med. Bureau, Inc.,* 131 Wn.2d 133, 157, 930 P.2d 288 (1997). All the essential elements must be established to support a claim of tortious interference. *Young v. Key Pharms., Inc.,* 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

He provides no evidence in the record, other than his own statement, that he

had a valid business expectancy (i.e., employment possibility) that was interfered with by the District. A nonmoving party cannot rely on allegations made in his or her own pleadings. *Young,* 112 Wn.2d at 225. If the nonmoving party to a summary judgment motion fails to make a sufficient showing to establish each element essential to that party's case and on which it will bear the burden at trial, the trial court should grant summary judgment. *Id.* Because Mr. Milionis cannot establish a prima facie case of intentional interference with a business expectancy, the trial court properly dismissed this claim. We need not analyze the other elements because Mr. Milionis cannot establish the first required element.

B. Outrageous Conduct. Mr. Milionis contends the District's conduct in this case is nothing short of outrageous. Specifically, he complains Dr. Nadeau recklessly filed a false charge against him. A claim of outrage requires proof of: "(1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) resulting actual severe emotional distress." *Womack v. Rardon,* 133 Wn. App. 254, 260-61, 135 P.3d 542 (2006).

To be considered outrageous and extreme, the critical conduct must be so outrageous in character and so extreme in degree as to be indecent, atrocious, and intolerable in a civilized community. *Kloepfel v. Bokor,* 149 Wn.2d 192, 196, 66 P.3d 630 (2003). Outrageous and extreme conduct does not include mere insults, humiliation, threats, annoyances, petty cruelties, or other trivialities. *Id.* Whether a

course of conduct is sufficiently outrageous to result in liability is generally a question of fact determined by the jury. *Chambers-Castanes v. King County,* 100 Wn.2d 275, 289, 669 P.2d 451 (1983). But, summary judgment is proper if reasonable minds could reach only one conclusion. *Birklid v. Boeing Co.,* 127 Wn.2d 853, 867, 904 P.2d 278 (1995).

Here, Dr. Nadeau notified OSPI of possible inappropriate conduct. WAC 181-86-110 requires superintendents to disclose such complaints when they possess reliable information to believe an employee has committed an act of unprofessional behavior. The settlement agreement specifies nothing "precludes the District and the District's Superintendent from meeting complaint and disclosure requirements under Chapters 180-87 and 180-86 WAC or under any other applicable law." CP at 53. Significantly, OSPI already knew about Mr. Milionis' past. And, after Dr. Nadeau's August 2004 notification, the District chose not to pursue an investigation. These facts do not amount to outrageous behavior so extreme in degree as to be indecent, atrocious, and intolerable in a civilized community. *Kloepfel,* 149 Wn.2d at 196. Accordingly, reasonable minds could reach but one conclusion; there was no outrageous conduct.

C. Breach of Contract. Mr. Milionis contends the court erred by dismissing his breach of contract claim based on the anti-SLAPP statute.

RCW 4.24.510, the anti-SLAPP statute, grants immunity to a person who communicates a complaint or information to any branch or agency of federal, state, or

local government. The purpose of the anti-SLAPP statute is to protect persons who make "'good-faith reports'" to government agencies. *Bailey*, 147 Wn. App. at 260 (quoting RCW 4.24.500). Mr. Milionis argues Dr. Nadeau's letter to OSPI was vindictive and not a good faith complaint. But, as discussed above, Dr. Nadeau had a duty to report the information to OSPI, OSPI was already aware of Mr. Milionis' past behavior, and there was no prejudice because OSPI chose not to pursue the matter. Accordingly, RCW 4.24.510 provides immunity to Dr. Nadeau for communication to OSPI. The trial court properly concluded likewise in dismissing Mr. Milionis' breach of contract claim. Mr. Milionis also discusses in his brief the application of the anti-SLAPP statute to his other claims. Those claims, however, were dismissed for failure to establish a prima facie case, not based on immunity from liability.

Given all, the trial court did not err in dismissing all of Mr. Milionis' claims.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Kulik, A.C.J.

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Korsmo, J.